



Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Daniel Bennett
Secretary

The Commonwealth of Massachusetts

Department of Public Safety

Board of Building Regulations and Standards

One Ashburton Place, Room 1301

Boston, Massachusetts 02108-1618

Phone (617) 727-3200

Fax (617) 727-5732

TTY (617) 727-0019

www.mass.gov/dps

Matt Carlin
DPS Commissioner

Richard Crowley
BBRS Chair

Thomas Perry
BBRS Vice-Chair

Robert Anderson
BBRS Administrator

APPROVED MINUTES

Board of Building Regulations and Standards (BBRS)

DPS Conference Room - 50 Maple Street - Milford, MA 01757

February 9, 2016 @ 1:00 p.m.

- Chairman, Richard Crowley (RC) opened the meeting at approximately 1:10 p.m. and then roll call was taken as follows:

Richard Crowley V-Chair (RC)	✓ present <input type="checkbox"/> absent	Thomas Perry (TP)	✓ present <input type="checkbox"/> absent
Robert Anderson (RA)	✓ present <input type="checkbox"/> absent	Peter Ostroskey* (PO)	✓ present <input type="checkbox"/> absent
John Couture (JC)	✓ present <input type="checkbox"/> absent	Monica Simmons (MS)	✓ present <input type="checkbox"/> absent
Kevin Gallagher (KG)	✓ present <input type="checkbox"/> absent	Michael McDowell (MM)	✓ present <input type="checkbox"/> absent
Jerry Ludwig (JL)	<input type="checkbox"/> present ✓ absent	Chris Penne (CP)	✓ present <input type="checkbox"/> absent
Kerry Dietz (KD)	✓ present <input type="checkbox"/> absent		

* Jake Nunnemacher (JH) participated as the designee for newly appointed State Fire Marshal, Peter Ostroskey.

RC introduced and welcomed Ms. Kerry Dietz as the newly appointed Board member representing registered architects in the commonwealth. Ms. Dietz thanked Chairman Crowley and Board members for the warm welcome, indicating that she is honored and humbled to be selected as a Board member.

General notes on format of these minutes:

- Votes are noted as **Motion** by, seconded by, and whether it was a unanimous or split vote.
- Agenda topics appear herein as numbered but may have been taken out of order as they appear on the meeting agenda.
- The February 8th Agenda is listed as **EXHIBIT A**; others are listed sequentially as addresses during the meeting.

2. RC recognized Alexander “Sandy” MacLeod and former State Fire Marshal, Stephen Coan, for their respective service on the Board and for general matters of public safety. RC read his letter of thanks into the record in recognition of Sandy’s work representing registered architects (**EXHIBIT B**) and Marshal Coan (**EXHIBIT C**) for his dedication as the commonwealth long-serving fire marshal.

On a **MOTION** by JN seconded by MM and a **MOTION** by MM seconded by KG respectively, it was unanimously approved to forward the letters of thanks to Sandy and Marshal Coan.

3. RA reviewed the *History and Procedures Manual* that was distributed to Board members (**EXHIBIT D**). RA explained that the manual is intended to provide members with perspective of the Board’s history dating back to Chapter 802 of the Acts of 1972 (*which established the Board’s predecessor agency – the State Building Code Commission*), tracing subsequent laws leading up to the Board’s current authority as established by Massachusetts General Law (MGL) c143 §§93-100.

RA asked Board members to review the content of the manual, most particularly, requirements of MGL c143 §94 which establishes, among other things, that Board members shall “ (a) *To formulate, propose, adopt and amend rules and regulations relating to (i) the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of any building or structure and use or occupancy of all buildings and structures and parts thereof or classes of buildings and structures and parts thereof, except bridges and appurtenant supporting structures which have been or are to be constructed by or are under the custody and control of the department of highways, the Massachusetts Department of Transportation, the Massachusetts Bay Transportation Authority, the metropolitan district commission or the Massachusetts Port Authority or for which said agencies have maintenance responsibility; (ii) the rehabilitation and maintenance of existing buildings; (iii) the standards or requirements for materials to be used in connection therewith, including but not limited to provisions for safety, ingress and egress, energy conservation, and sanitary conditions; (iv) the establishment of reasonable fees for inspections, which fees shall be collected and retained by the city or town conducting such inspections*”.

Additionally, RA referred Board members to §93 which states that “*Each member of the board who is not otherwise an employee of the commonwealth shall receive from the commonwealth fifty dollars for each day or portion thereof spent in the performance of his official duties; provided, however, that the total sum paid to any member in any fiscal year shall not exceed three thousand dollars. Each member shall be paid necessary traveling and other expenses incurred in the performance of his duties*”.

As well as §95 which establishes “*. . . the powers and duties of the board to be exercised to effect the following general objectives: (a) Uniform standards and requirements for construction and construction materials, compatible with accepted standards of engineering and fire prevention practices, energy conservation and public safety*”.

RA encouraged Board members to review other contents of the manual, including the *Frequently Asked Questions* (FAQs) provided in Section 11, the reimbursement form (*for those who need it*) in Section 10, and varied program descriptions and staff assignments in Section 7. Additionally, RA encouraged Board members to review and ask questions periodically to ensure that we are appropriately carrying out duties as prescribed by the Board’s enabling legislation.

Finally, RA made it clear that the manual does not address Open Meeting Law (OML) issues or similar matters relating to the conduct of Board members and staff before, during or after public

meetings. RA indicated that DPS legal staff is working on procedures relating to these matters and will be providing training\guidance to BBRs and other DPS Board members in coming months.

JN asked if the manual could be posted on the DPS website. RA indicated that he would check.

4. On a **MOTION** by MM seconded by JC it was unanimously voted to approve the minutes for the January 12, 2016 BBRs meeting with the following revisions as offered by JN (**EXHIBIT E**).
(Exhibits listed in below paragraphs are in reference to those in the January 12th meeting minutes.)

Page 3, Item 8. Add the **following** language:

1. **Presentation by DOER and EEA staff regarding energy provisions to draft 9th Edition of 780 CMR.** Ian Finlayson ("IF"), from DOER, and Linda Benevides ("LB"), from EEA, presented the BBRs members and DPS staff with a handout regarding the energy provisions in the draft Base and Residential volumes of the 9th Edition of 780 CMR. This included solar-ready provisions; eV charging availability; and updates to the stretch code (**Exhibit H**). IF explained that he feels the solar-ready provisions of the Base volume does not add any additional cost to design and/or construction. JC felt that this was incorrect, and that it would require significant changes in order to meet the shading requirements. **JC indicated that certain A-2 (assembly uses) with less than 50 occupants are considered to be business operations (small mom and pop style operations) that may be adversely affected by the change.** JN noted that he feels the eV provisions should be addressed in the Electrical Code, not the Building Code. **JN is concerned that we are including electrical provisions in the building code. JN emphasized that electrical provisions belong in the electrical code.** RC directed FZ *work with Counsel and DFS to discuss, and provide guidance to the Board (regarding jurisdiction) at or prior to public hearing. Emily Norton ("EN") from the Sierra Club briefly discussed the need to include the eV charging in the code, and handed out a document called Charging Up (Exhibit I).*

Page 4, Item 9b. Add the **following** language:

101.5 BBRs Technical Advisory Committees. FZ presented the proposed composition changes to the BBRs Technical Advisory Committees to the board members (**Exhibit K**) for discussion. He explained that one of the code consultant positions will be replaced by a fire prevention officer. He also explained that a definition was derived for code consultants to be used for the membership of the Chapter 34 Committee. MM asked if a CSL holder could be added to the list of licensed individuals eligible to be considered a Code Consultant. JN asked to change "duly licensed" to "duly licensed and/or certified" because fire prevention officers and building officials are ~~licensed~~ **certified** not ~~certified~~ **licensed**. FZ noted that the Property Maintenance Advisory Committee will be charged with defining property maintenance standards, but will defer to the FPEP Committee for guidance in maintenance of Fire Protection Systems. DH explained that this is being recommended for inclusion in the text of the code in order to minimize risk of Conflict-of-Interest Law violations.

Page 5\6, Item 9o. Add the **following** language:

54:R302.2 Townhouses. FZ explained that the recommended wording has changed, slightly, since the section was printed. First, Item 1 will be a one (1) hours fire-rated assembly between sprinkler-protected townhouses. For Item 2, the recommendation is to require a 2-hour fire wall, in accordance with the proper section of the *International Building Code*, which extends through the roof. FZ noted that the code would then require sprinklers in townhouses unless they complied with item 2. RC said that this addition adds to the argument for compartmentalization of fire

areas (passive fire protection), instead of active fire protection methods. MM began discussing frequency of fire walls (between each townhouse unit, or every-other unit). RC said that this can be figured out at public hearing. JN state that it is the fire service position that all townhouses should be required to be sprinklered as required by the virgin International Residential Code (IRC).

Page 7, Item 15. Add the following language:

Discuss fire protection concerns in exhibition / conference exhibit booths. FZ explained that the MCCA requested that the BBRs look into fire protection concerns in covered exhibit booths. Currently, these are treated as kiosks, administratively. FZ proposed developing a working group, comprised of: FZ, State Building Inspectors Majuri and Wojciechowicz, DFS staff, MCCA staff, FPPF Chair Robert Carasitti, Maurice Pilette, BFD, and another fire protection engineer. RC directed FZ to initiate this working group to then present their findings to the FPPF for review prior to presentation to the BBRs. JN suggested that the issue should be sent to the FPPF committee, and KG requested that another fire chief (outside Boston) be added to the task force.

KD asked about the availability of exhibits that are referenced in meeting minutes. DPS General Counsel, Beth McLaughlin, indicated that all DPS meeting minutes are posted on DPS website. However, open meeting law protocols do not require exhibits to be posted with the minutes. Due to the size of many attachments, it is impractical to post them with the minutes.

RA explained that Board members typically receive items labeled as exhibits either with the agenda or as a handout at the meeting. At times, materials may be viewed via *PowerPoint* or some other type of presentation (*not as a physical document*). However, all materials viewed at BBRs meetings (*whether hard copy or not*) are available to Board members at any time via request and/or by others via a public records request.

2. On a **MOTION** by JN seconded by MM it was unanimously voted to approve 116 new Construction Supervisor Licenses (CSLs) issued during the month January, 2016.
3. On a **MOTION** by MM seconded by JN it was unanimously voted to approve CSL reinstatements due to medical reasons for Ramon Garcia, Jr (CS-061693) and Patrick W. Brady (CS-056445).
4. On a **MOTION** by MM seconded by JN it was unanimously voted to approve a CSL reinstatement due to special circumstances to Manuel J. Fernandez (CS-085850).
5. On a **MOTION** by JN seconded by TP it was unanimously voted to approve a Concrete Testing Laboratory license for the Massachusetts Bay Transportation Authority (MBTA) - CTL-083.

MM was concerned that the CTL program licenses companies as opposed to individuals. Companies are more difficult to deal with should something go wrong.

RA indicated that there is always a main point of contact and responsible party identified and TP stressed the CTL staffing structure is pretty rigid, clearly defining roles and responsibilities.

On a **MOTION** by MM seconded by RA it was unanimously voted to approve the Building Official Certification Committee (BOCC) minutes for their January 6, 2016 meeting (**Exhibit F**) with the exception of item 5b on page 3 (*and similar items*) wherein the *New Employee Report Form (NERF)*

for Chris Carmichael appointed to the position of Local Inspector for the Town of Middleborough was signed by the by Town Manager. *(The minutes were incorrectly referred to as February 3, 2016 on the meeting agenda.)*

State Building Inspector, William Horrocks, represents BBRS members on the Building Official Certification Committee (BOCC). Inspector Horrocks was present at the meeting and explained that he voted against accepting the NERF for Mr. Carmichael and others because he believes that the form should be signed by either the mayor or select board chair depending upon the governmental structure.

To further substantiate, RA explained that MGL c143 §3 specifies that *"The chief administrative officer of each city or town shall employ and designate an inspector of buildings or building commissioner as well as such other local inspectors as are reasonably necessary to assist the inspector of buildings or building commissioner to administer and enforce the state building code as well as section thirteen A of chapter twenty-two and the rules and regulations made under the authority thereof. . . . The inspector of buildings or building commissioner shall report directly and be solely responsible to the person or public body that appointed him"*. Over the years, this office has been informed of intermediaries between the inspector of buildings and appointing authority within certain cities and towns. It appears clear that the law requires direct relationships between inspector and appointing authority *(without an intermediary who may try to sway a code related decision)*.

The DPS, RA continued, has been pro-active in informing appointing authorities about obligations under the law. Nonetheless, the practice seems to continue. JC echoed concerns regarding this practice and requested further DPS assistance.

DPS General Counsel, McLaughlin indicated that the office will continue to research and monitor the practice to determine the best solution.

On a **MOTION** by JN seconded by MM it was unanimously voted to table all items relating to this matter until Board members are able to further review.

6. On a **MOTION** by MM seconded by JC it was unanimously voted to approve the make-up of two (2) task forces who will develop guidance for future board actions regarding small PV solar systems and fire protection requirements for exhibition booths with the following correction:

Replace one of the fire protection engineers with a *Fire Chief from a city with a convention center* in the proposed make-up of the task force for fire protection at exhibition/conference exhibit booths.

Proposed make-up

- a. Prescriptive approval of small solar PV systems task force
 - i. Felix Zemel (DPS);
 - ii. Kara Sergeant, or other DOER staff (DOER);
 - iii. Tim Fitzgerald (designee for Building Officials);
 - iv. Michael Duffany (designee of installers of single-family homes); and
 - v. TBD (representative of the solar industry)
- b. Fire protection at exhibition / conference exhibit booths
 - i. Felix Zemel (DPS);

- ii. Andy Majuri & John Wojciechowicz (DPS State Building Inspectors);
- iii. DFS Staff
- iv. *Fire Chief from a city with a convention center*
 - v. *Maurice Pilette (Fire Protection Engineer);*
 - vi. *Eric Cote (Fire Protection Engineer);*
- vii. Jack Dempsey, or designee (BFD Fire Prevention); and
- viii. John Donahue, or designee (MCCA)

Discussion Items:

- 7. Board members discussed the timing for the Ninth Edition of the State Building Code.

DPS Assistant Counsel, Stephen Carley, was present to address the matter indicating that the target date remains as July 1st for promulgation. However, there are still a number of steps left in the Executive Order (EO) 562 process, including, among other things, the public hearing for the code.

Counsel Carley also indicated that there will likely be a period of time following the effective date of the ninth edition whereby the code user may follow either the eighth or ninth edition code provisions without mixing the two under a blanket variance process. Definitive language will be developed and made part of each code (*eighth and ninth*) to make it abundantly clear as to the how the process may be used during the transition period between codes. Ultimately, if a code user is not able to benefit from the blanket variance period, he\she may seek assistance through the building code appeals board (BCAB).

- 8. On a **MOTION** by RA seconded by JC Board members unanimously voted to adjourn the meeting at approximately 3:40 p.m.

Exhibits:

- A. Meeting Agenda.
- B. Letter of thanks to former BBRS member Alexander "Sandy" MacLeod.
- C. Letter of thanks to former BBRS member Marshal Stephen Coan.
- D. ***BBRS History and Procedures Manual.***
- E. BBRS Meeting Minutes January 12, 2016 (*Approved as amended*).
- F. Building Official Certification Committee (BOCC) Meeting Minutes for January 6, 2016 (*Approved with amendments – portions tabled for further review*).